G. R. S. IX-5]

Previous references.

File No. 41-99

Serial Nos. 1-13

191 .

(G.R)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-13.

~~Part~~ B for Nov. 00

SUBJECT.

Levy of duty on beer imported into the State from C. & M. Station, Nilgiris &c

To the F.A.R. in Mysore

No. 4295 dated 27-11-00.

Ex 5-95

Communicates orders on the above

passed

W D 88—GPB—50,000—24-7-16

SECRETARY'S OFFICE.

REVENUE BRANCH

OFFICE NOTE. 3

SUBJECT Levy of duty on beer imported into the state from the C & M Station, Nilgiries &c

LAST REFERENCE (Ref 71)

Letter No. 4121 / 401.900 dated 21st August 1900

from the F A Resident in Mysore

also ~~from~~ letter no 1332/66 dated 22nd August from the Excise Commr in Mysore

As referred to in the F Asstt Residents letter under reference, Section X/2 3 of the Excise Act XXII of 1881 (introduced into Mysore by Regulation III of 1885) which is now in force in Mysore, lays down that no person shall bring into the territories of Mysore any spirit manufactured in India beyond the limits of Mysore, before payment of the prescribed duty

Ex & mil Sup

duty to the mysore Government

The word spirit is defined in the preamble of the same act as "any liquor containing alchohol obtained by distillation" country beer falls therefore under country fermented liquors. Technically speaking the duty cannot be levied under the provisions of the act The Excise Commr has also already apprehended some difficulty in this respect and consequently rejected the introduction of the Madras Abkari act in which all defects of the kind have been remedied.

On the contrary the levy of duty on beer is not a new thing. Even before the introduction of the present act of 1881 (introduced by regulation III of 1885) the system was in force apparently under the authority of the acts then in force The first order on the question appears to be that of 1873 in which mention is made of the levy of duty on

on all beer exported consumed in the Mysore State. But the levy of duty on beer manufactured in the Mysore province as well as on that imported into Mysore, is prescribed in Government order no. 6377-85-Rev 1113 dt 27th February 1886. Details in 1889 definite rules under the Excise act XXII of 1881 were issued in notification no 31 dt 9th May 1889 in which all "country spirits and country fermented liquors" were made liable to pay duty to the State before they are imported into Mysore. The above Rules are in force now and the practice of levying duty on beer, all along existed. To make this practice legal, the form of notice was also prescribed 1896 for the sale of country beer Taverns in which the licensee is required to pay a duty of 2 annas for every gallon of country beer or porter purchased by him.

Extn of Rule I & II put up vide Sl no 11a on file Section III

Sl no 38 on file Section III

para 6 (3) of Sl no 38 - do -

para 6 (1) of the same form of sale notice restricts the sale of beer of a particular manufactured by particular companies but the effect of these conditions was that the licensee who purchases the privilege of selling country beer in the mysore state should pay a duty of 2 annas on every gallon of beer imported into the state.

In connection with the question of adopting certain procedure for exporting beer from the Cd in station into the state, a reference was made by the residency to which the Darbar replied in the following terms —

" that the Darbar have nothing to say against the procedure which is in accordance with the Excise (Mall-liquors) act XIII of 1890 and which in no way affects the Darbar's right to levy a further duty of two annas on

every gallon of beer imported into the city from the station in the same way as has hitherto been done in the case of beer imported from the neighbouring

now the question is whether the Resident recognizes the ~~Durbar~~ rules issued by the Durbar under notification no 31 & the 9th may 1889 according to which the duty is leviable by the mysore government on all beer imported into mysore but the Resident apparently does not recognize them. Herewith also submitted letter ~~Letter~~ no 1332/66 & 22nd August 1900 recently received from the Excise Commr requesting that the Resident should be moved to inform the Neilgherry Brewery Company - that under the rules in force in mysore no country spirits or fermented liquors should be imported into mysore without payment of the prescribed duty to the mysore Govt.

put up.

Subbaraya Shetty Secretary

27/8/00.

28/8/00

P. T. O.

(memo continued)

to directed a copy of the Residency letter was sent to the Excise Commr for such observations as he might wish to make and in reply he states (in his letters nos $\frac{15-41}{72}$ & $\frac{17-26}{80}$ & 8th & $\frac{14}{15}$ th September 1900) as follows:—

1 That the duty of 2 annas ordered to be levied in 1873 by the then Chief Commissioner of Mysore, was on all beer brewed either for consumption in the Province or for export, but not on country beer imported.

2 That in 1888 the Nilgiri Brewery then known as "Murree Brewery Company" agreed among other things to pay a duty of 2 annas on every gallon of beer imported into the state

3 that, there being no specific provision in the act XXII of 1881 for the levy in question of duty in question, the Mysore Govt framed the requisite Rule II (b) under notification no 318 of 9th May 1889 in exercise of the powers conferred

by section 55(9) of the Excise Act, the breach of which being punished by section 42 of the same act.

4 that the above principle was also adopted in the arrangent entered into with the madras Govt under which the tree tax or toddy drawn from the trees in the madras presidency and imported into the mysore state is credited to the mysore state & vice versa

5 that as no person is permitted to possess more than 4 seers of fermented liquor under section 21 of the act, the mysore Govt is competent to levy duty or pass passes authorizing to import more than that quantity of fermented liquor,

6 that the Bombay excise act 12 of 1896 (which was introduced in place of the act XII of 1887) which has extended the provision about the import of "spirit" to fermented liquor also was not recommended for introduction in mysore, as the same contained no provision about the tree tax system and that as the tree tax system was introduced

to the state, the madras Abkari act which contains all provisions required under the revised systems of ~~Abkari~~ the administration of the various items of Excise Revenue now in force in Mysore, that act has now been recommended for introduction and

Lastly that the levy of duty on beer (which was authorized under the excise act of 1856) & subsequently imposed in 1873 confirmed in 1880 by the proceedings of the ~~Chief~~ Commissioner

Lastly that the proceedings of 1873 & 1880 issued by the chief Commrs of Mysore under the Excise act of 1856, regarding the levy of duty on beer ~~was~~ seem to have had the force of law at the time of the Rendition.

Section XXV of the act of 1856 runs as follows:—

" Spirituous liquors passed from Distilleries worked according to the English method, fermented liquors manufactured at a licensed Brewery, and spirituous

fermented liquors imported either by land or by sea, shall not be sold except under license from the collector.—

Secretary

Submitted with also a draft for approval or otherwise.

KG
18/9/00.

18/9/00

Did not see Punnaya
send me a D.O. the other
day asking me to
await a further com-
munication from
him on the subject.

26/9/00

Subd

Letter no 1726/80 dt 14th September/1900 from the Excise Commr (put up) is the further communication promised in his D.O. of the 11th September/1900 (also in the file). as will be seen from Mr Venkat Ranga Iyengar's D.O of the 15 instant

KG
28/9/00.

A legal question has been raised by the Resident.— Please send the file to the Govt Advocate for their opinion of the case, in pursuance of

[illegible] 11—10—00

REVENUE DEPART
Gl. No. 7989
MAY 31 1900
Excise] En 442
DEWA

11

63

1899-1900

SECTION S.R.
FILE NO. 41 of 1899
~~26894~~
SER'AL NO. ~~56~~ 108

From
The Excise Commissioner
in Mysore

To
THE SECRETARY TO GOVT. OF MYSORE,
General & Revenue Depts

Dated 29th
Despatched 30 } May 1900
Received

General No. 6390
No. 431
Enclosure No.

& all destroyed

~~In reply to~~ Adverting to secretary's
~~dockets Nos. 7417 & 5~~ dated 17th April
1900, ~~7509~~ dated 21st idem, 7704
~~Ex 258~~ ~~SUBJECT.~~ Ex 264
dated 27th idem and 7808 dated
2nd May 1900 Ex 270

Subject

Reports that no duty has been paid to Mysore Government on the Niligiri beer exported from Niligiri and Civil and Military Station to the Kolar Gold Fields and requests that the quantity exported from the Civil & Military Station may be ascertained to enable the recovery of the duty from Mr Fitz Patrick Agent of the Niligiri Brewery Ko'lar Gold Fields.

References
(to be entered only in the Dewan's Office.)

Ex referred

31.5

1.6.00.

Excise Commissioner's Office

No 6390 / 431 Bangalore dated 29th / 30 May 1900

From

The Excise Commissioner
in Mysore

To

The Secretary to the
Government of Mysore
General & Revenue Department

Sir,

Adverting to your dockets
Nos 7417 / Ex 71. 5-95 dated 17th April 1900, 7509 / Ex. 258 dated 21st idem, 7704 / Ex 274 dated 27th idem,
and 7808 / Ex 270 dated 2nd May 1900, forwarding
for needful being done the duplicates
of permits granted by the Collector
of the Nilgiri district to the Nilgiri
Brewery Company Ootacamund,
for exporting certain quantities of
Nilgiri beer to the Kolar Gold Fields,
I have the honor to state that it
has been ascertained from the
Deputy Commissioner, Kolar District,
that the prescribed duty at 2 annas
per gallon has not been paid to
the Mysore Government in
accordance with Rule II (b) in
Government Notification No. 31,
dated 9th May 1889, on account
of

of the Niligiri beer exported to the Kolar Gold Fields, as per said permits Mr. J. J. Fitzpatrick, Agent, Niligiri Brewery Company, Kolar Gold Fields Branch also admits that several consignments of Niligiri beer have been imported to the Gold Fields from the said Company's depôt in the Civil and Military Station of Bangalore without the payment of the prescribed duty to the Mysore Government. But as no permits have been received from British authorities in support of such exports from the Civil and Military Station, this department is in ignorance of the quantity of beer exported from the Niligiri Brewery Company's depôt in the Civil and Military Station. Accordingly, I beg to request that the Resident may be moved to call upon the Superintendent of Excise in the Civil & Military Station to report the total quantity of Niligiri beer exported to the Kolar Gold Fields from the Civil & Military Station, to enable me to recover the duty from Mr. Fitzpatrick who has asked for a Statement

Showing

showing the total amount of duty
due to the Mysore Government

I have the honor to be

Sir,

Your most obedient Servant

M. Narasimha

Excise Commissioner
in Mysore

Extract of ~~para~~ Rule II (b) of Notification

No 31 dt 9th May 1889.

Rule II (b) ~~add~~ country spirits and country fermented liquors shall pay an Excise duty to the said Government and no such country spirit or country fermented liquor shall be imported into the Territories of Mysore without the payment of such Excise duty.

Draft for approval

64

Camp No 133 dated 12/6/00

To The J. A. to the Resident in Mysore

SECTION SR
FILE NO. 4 of 1899 2606 etc
SER'AL NO. 57 94

Sir, ~~3264~~

Adverting to this Office letter no. 2897 dated 11th October 98 re the ~~procedure~~ levy of duty by the Darbar on beer ~~imported~~ exported from the C & M Station of Bangalore, I am directed to state that the Excise Commr. in Mysore brings to notice that several consignments of Mulgere beer have been imported to the Kolar Gold Fields from the Mulgere Brewery Company's Depôt in the C & M Station, without the payment of the prescribed duty to the Durbar Mysore ~~Govt~~ and that Mr. J. J Fitzpatrick, Agent, Mulgere Brewery Company, Kolar Gold Fields Branch, ~~admits~~ admits this fact no

~~Sir no 49 on file no 57 of 95-96~~
42

+ S.R. 19-98-4
not in the file

permits have been received
~~by the Darbar from~~ by the
Darbar in support of such
experts from the Station and
the Excise Department of the State
is consequently in ignorance
of the quantity of beer ~~their~~ exported
~~from the Station~~. I am therefore
to request the favor of the Darbar
being informed of the quantity
of beer exported up to date from
the Company's depôt in the Station
~~in order~~ so as to enable the Excise
Commr in myore to recover
the duty from Mr. Fitzpatrick
who, it is reported, has asked
for a statement shewing the
total amount of duty due
to the Darbar.

In this connection
I am ~~also~~ further to request the
favor of the ~~Resident being~~
moved ~~to issue~~ necessary

arrangements being made to ~~for~~ furnish the Darbar with duplicates of permits in support of every future consignment of the kind ~~35~~ exported from the station, as is done in the case of consignments exported from the Nelapore Brewery, Coolgardie, to the Kolar Gold Fields

I have de

C

12/6/00

N

3/6/00 Secretary

KC

2/6/00

REVENUE DEPARTMENT
Gl. No. 486
JUL. 20 1900
No Ex 19
DEWAN'S OFFICE
Excise

26

69

189

From The Excise Commissioner in Mysore

SECTION SR.
FILE No. 4/0f 1899
SER'AL No. 82 B

To

THE SECRETARY TO GOVT. OF MYSORE,
General and Revenue Depts.

243

Dated 17th July 1900
Despatched 19 do
Received
General No. 328
No. 13
Enclosure No.

In reply to

SUBJECT.

Solicits that the Resident may be requested to inform the Kuligere Brewery Company, as well as Messrs. Meaken & Co. of the Kirkee Brewery, that their beer cannot be imported into the Mysore State without prepayment to the Mysore Government of the prescribed duty.

References
(to be entered only in the Dewan's Office.)

Ex R
R 20. 7. 00.
21-7.00.

No: 328/13

Excise Commissioner's office
Bangalore, dated 17th July 1900.

From,

The Excise Commissioner
in Mysore

To.

The Secretary to Government
General and Revenue Departments

Sir,

In acknowledging the receipt of your docket No. 8968/Ex.F.5-95, dated the 30th June 1900, and its enclosures, and in continuation of this office letter No. 6390/431, dated 29th May 1900, I have the honor to solicit that the Resident may be requested to inform the Nilgiri Brewery Company, as well as Messrs. Meakin & Co., Proprietors of the Brewery at Kirkee, that their beer being country fermented liquor as per Rule I(b) in the Mysore Government Notification No: 31, dated 9th May 1889, it cannot be imported into the Mysore State without prepayment of the prescribed duty to the Mysore Government, (Viz. two annas per gallon), as per Rule II (b) in the said notification.

I have the honor to be
Sir,
Your most obedient servant

[signature]
For Excise Commissioner
in Mysore.

Draft for approval C.

29

71

To

The First Assistant to the

Resident in Mysore.

SECTION SR 4107 1899

FILE NO. ~~2600-94~~

SER. AL. NO. ~~64~~ 14

Sir 716 / Cm 75-95 of 26/7/00. Sec. 1.

With reference to your ~~memorandum~~ endorsements nos 3390 & 3391 & 14th July 1900, forwarding for disposal permits granted by the Kilpeer Collector for exporting beer from the Kilpeer Brewery Company to the Kolar Gold Fields and in continuation of ~~this office~~ my letter Camp no 133 of the 12th ultimo, I am directed to request the favor of ~~the Resident being moved to~~ yours informing the Kilpeer Brewery Company, as well as messrs Meakin & Co proprietors of the Brewery at Kirkee, that these beer cannot be imported into the Mysore State without prepayment of the prescribed duty of 2 annas ~~per gallon~~ a gallon as per Rule II (6) ~~in the~~ V

Sl no 64.

Send up

destroyed

30.

Mysore Government notification no 31 dated 9th May 1900, on the ground that the beer in question is country fermented liquor ~~or toddy~~ under Rule I(6) of the said notification, ~~the~~ extracts ~~from which~~ wherof are herein ~~with~~ enclosed for ~~your~~ ready reference

I have de
25-7

23/7/00 Secretary

23/7/00

(Hw) 31-

Extract of Rules I & II from Govt Notification No: 31 dated 9th May 1889

48

Rule I - The Government of Mysore have decided that

(a) "Foreign spirits" and "Foreign fermented liquors" are such "Spirits" or "Fermented liquors" as are manufactured in any place in Europe, America or Australia and imported into the territories of Mysore after due payment of duty to the British Indian Government at the Port of Importation in India

(b) All other spirits and fermented liquors (including those manufactured in Java, Ceylon and any place whatsoever in India) shall be treated as "Country Spirits" or "Country fermented liquors" as the case may be.

Rule II (a) Foreign spirits and foreign fermented liquors shall ~~pay no Excise duty~~ not be liable to pay an excise duty to the Government of H. H. the Maharaja; and

(b) All country spirits and country fermented liquors shall pay an Excise duty to the said Govt. and no such country spirit or country fermented liquor shall be imported into the territories of Mysore without the payment of such Excise duty.

43

Urgent

Excise]

1835

20-8-1899-1900

From The Excise Commissioner in Mysore

To The Secretary to Govt of Mysore, General and Revenue Depts.

SECTION SR
FILE No. 4 of 1899
SERIAL No. 20-Exf

Rec: (Ex) 18-8-00.

Subd

A copy of this office No. 1457 Ex.F.5-95- of 16th August 1900 (wh. is referred to inside) is put up. The question regarding the introduction of the new Excise Regulation is pending in the Legislative Branch. May this also be transferred there?

2/18/00

Submitted Secretary

21/8/00

Recd

Recd 21/8/00

Recd

Recd

Recd

No. 1199/57

Excise Commissioners Office
Bangalore, dated 17th/18th August 1900

From

The Excise Commissioner
in Mysore

To

The Secretary to Government
General and Revenue Departments

Sir,

In acknowledging the receipt of your docket No 1451 for F. No. 5-1896 dated the 16th instant, forwarding 49 duplicate Permits relating to the consignments of about five hundred pallams Beer imported into the Kolar Gold Fields by certain European and native residents thereof, from the Bulgur Brewery, I have the honor to again urge on the attention of Government that the defect in our present Excise Act, viz- the omission of the words "fermented liquor" in section 21 of the Act, and the omission of necessary provisions in the act regarding the export of spirits and

and fermented liquors have afforded facilities for bringing into the territories of Mysore large quantities of country beer and other country fermented liquors to the jeopardy of the arrack and toddy revenue of the Mysore State. Under such circumstances, I beg to solicit attention to the correspondence ending with my letters Nos. 6493, dated the 17th April 1899, and 2365/89, dated 23rd September 1899, and again urge the indispensable necessity for the very speedy introduction of the proposed Excise Regulation in lieu of the present imperfect and defective Excise Act which has already ceased to exist in any part of British India.

I have the honour to be,

Sir,

your most obedient servant

J. Murray

Excise Commissioner

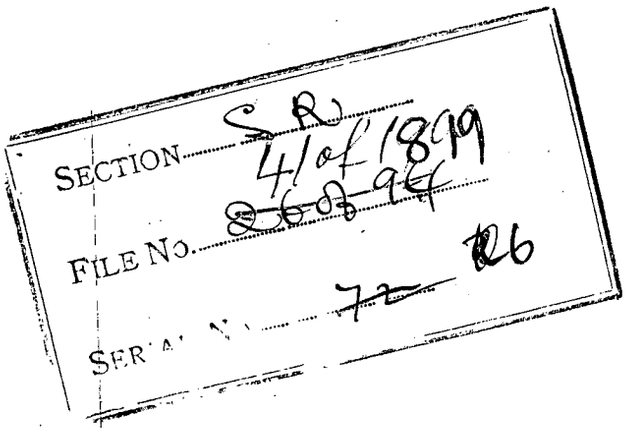
in Mysore

and in file.

In the Excise Branch

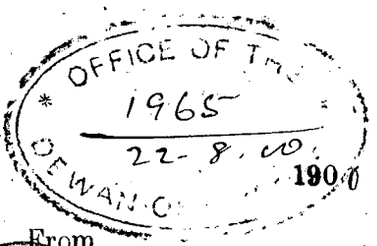
Thayale Jeff. 1.

B.



88

74

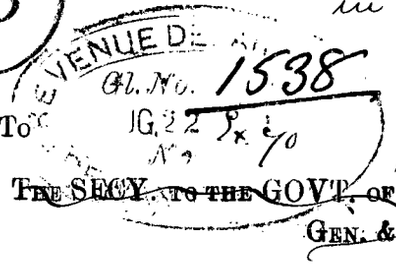


Pol 311

1900

From The F. A. Resident in Mysore.

78



To THE SECY. TO THE GOVT. OF MYSORE, GEN. & REV. DEPTS.

Dated 21st August 1900.

Despatched

Received 29

General No. 4121

No. 401-900

Enclosure No.

Inviting a reference to this office No. 716/Ex-795 of 26/7/00 asking that the Nilgiri Brewery Company may be informed that their beer cannot be imported into Mysore State without payment of the duty of 2 annas a gallon &c. and stating that the Resdt considers that until the existing Excise Regulation is amended he would not be justified in informing brewers exporting beer from British India or from the Cochin Station that a duty on such beer is legally payable to the Durbar.

References to be marked.

Rd. 5-55-P.117. 22/8/00

23/8/00.

Excise

22

See Sup Ord

78

No 412/
401-900

From

The FIRST ASSISTANT to the RESIDENT

in MYSORE.

To

The Dewan of Mysore.

Dated Bangalore, 21 August 1900.

Sir,

I am directed to invite a reference to your letter No.716-Ex F.95 dated the 26th ultimo, asking that the Nilgiri Brewery Company and Messrs. Meakin & Co, -- Kirkee, may be informed that their beer cannot be imported into the Mysore State without prepayment of the duty of 2 annas a gallon prescribed in Rule II (b) of the Mysore Government Notification No.31 dated 9th May 1889.

2. On a consideration of the circumstances under which the duty in question was imposed Colonel Robertson is of opinion that the Mysore Government have not now and never have had any legal power to enforce the payment of duty on beer manufactured in British India and imported into the Mysore State. By section 23 of the Mysore Excise Regulation III of 1885, the Mysore Government has power to impose any duty on spirit manufactured

...ther place in India beyond the limits of the territories of Mysore. Spirit is defined in section 3 (5) of the Notification as "liquor containing alcohol obtained by distillation" and it does not include "malt liquor" which is included under the definition of "fermented liquor" in section 3 6. In the British India Excise Act No.XII of 1896, section 31 (1) contains a similar provision, imposing duty on the import of "spirit" and section 31 (2) extends this provision to "fermented liquors".

3. The Mysore Government has no power thereforeunder the Excise Notification No. of 1885 to impose an import duty on beer. Nor was there any rule imposing this duty legally done under the Excise Act 1871, which could be kept alive by section 2 of the Excise Notification No. of 1885. For the Government of India have held in their letter in the Foreign Department No.1092 I dated the 10th March 1891 copy of which was forwarded to the Mysore Government with the letter from this office No.1435-189-90 dated the 11th May 1891 that the levy of any duty or tax on beer was not authorised by the Excise Act of 1871. Nor was the rule which was in force before the Notification and under which a duty on beer was formerly collected, kept alive by clause 19 of the Instrument of Transfer; for at the time of the Notification that rule, though actually enforced, did not have the force of law, being inconsistent with the provisions of the Excise Act then in force under which it purported to have been made.

4. The position therefore legally is that the British Government has power to impose duty on both spirit and beer imported into the Civil and Military Stations of Bangalore from Mysore, while the

Dasbar

Durbar has power to impose a duty only on spirit and not on beer whether imported from the Civil and Military Station or from British India. The Notification of the Mysore Government No.31 dated the 9th May 1889 an extract of which was received with your letter under reply is accordingly 'ultra vires' and cannot be enforced by the infliction of penalties under the Excise Regulation. In this connection it may be noticed that section 36 (c) of the Regulation provides a penalty for importing spirit' without payment of duty, but not for importing fermented liquor Under these circumstances, the Resident considers that until the existing Excise Regulation is amended he would not be -- justified in informing brewers exporting beer from British India or from the Civil and Military Station that a duty on such beer is legally payable to the Mysore Government.

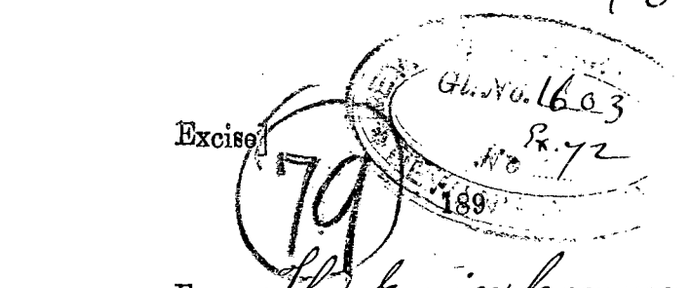
I have the honor to be,

Sir,

Your most obedient servant,

for First Assistant Resident.

78



79

Excise

From The Excise Commissioner in Mysore

To

THE SECRETARY TO GOVT. OF MYSORE,

General and Revenue Depts.

295

Dated 22nd. august 1900

Despatched

Received

General No. 1332

No. 66

Enclosure No.

In reply to the Secretary's No: 1685 Ex: F. 5-95 dated the 21st. instant.

SUBJECT.

Solicits that the Resident may be requested to inform the Kilgire Brewery Company's agent in charge of the Depot in Civil and Military station that no country beer can be imported into the territories of Mysore without the pre payment of the prescribed Excise duty Viz: 2 annas per gallon

References
(to be entered only in the Dewan's Office.)

25.8.1900

Inv. 1332
66

Excise Commissioner's office
Baugalore, dated 22nd/23 August 1900

From

The Excise Commissioner,
in Mysore,

To

The Secretary to the Government of Mysore,
General and Revenue Departments.

Sir,

In acknowledging the receipt of your official memo No: 1685/Ex-T.-5-95, dated the 21st instant, forwarding copy of correspondence regarding the Nilgire beer imported to the Kolar Gold Fields from the Nilgire Brewery Company's Depôt in the Civil and Military Station of Baugalore, without the payment of the prescribed duty to the Mysore Durbar, I have the honor to submit that the Resident may be requested to inform the said Company's Agent in charge of the Depôt in the Civil and Military station

station, that as laid down in Rule II (b)
in Mysore Durbars notification No: 31, dated
the 9th May 1889, all country spirits and
country fermented liquors shall pay an
Excise duty to the said Government and
no such country spirit or country fermented
liquor shall be imported into the territories
of Mysore without the payment of such
Excise duty; and that accordingly the
prescribed duty of two annas per gallon
shall be prepaid into the Bangalore
District Treasury for all Nilgiri beer
imported into the Kolar Gold Fields
or any other part of the Mysore State.

I have the honor to be
Sir,
Your most obedient Servant

M Rice

Excise Commissioner
&c. in Mysore

'84

Draft for order

87

Secret cutar letter no 412t / 401.900

dated 21st August 1900 from the First-asstt to the Resident in Mysore, stating in reply to this office no 716-Sr 5-of 95 of the 26th July 1900, that the Darbar has no power under the existing Rules to impose duty on beer imported into Mysore and that consequently the Resident would not be justified in requiring the brewers outside Mysore, to pay import duty on beer imported into Mysore.)

SECTION SR 41 of 1899
FILE NO. 2606-94
SERIAL NO. 76-8

Copy of the foregoing is forwarded to the Dewan Commr in Mysore for such observations as he may wish to make in the

No. 2184 & 5-9-00.
Ex. F. 5-95

Exigent. 86

2725
10-9-'00

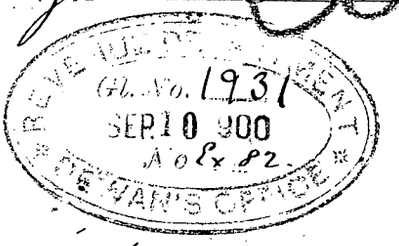
Excise] 1900

(83)

From The Excise Commissioner in Mysore

To

THE SECRETARY TO GOVT. OF MYSORE,
General & Revenue Depts.



SECTION S.R.
FILE No. 4 of 1899
SERIAL No. 77 09

Dated 8th } September 1900
Despatched
Received

General No. 1541
No. 72 Enclosure No.

In reply to Secretary's Ro 2184 dated 5th instant. Ex. F. 5-9'5 SUBJECT.

Submits his observations in regard to the Resident's remarks that Mysore Durbar are not competent to levy an import duty on Country beer.

Rect on Saturday (the Secretary) 8/9/00

References
(to be entered only in the Dewan's Office.)

Ex: Sub with Ltr
1 Note
11/9

No 1541/72

Office of the Excise Commissioner in Mysore

Bangalore, dated 8th September 1900

From

The Excise Commissioner in Mysore

To

The Secretary to the Government of Mysore General & Revenue Department

Sir,

In acknowledging the receipt of your official Memo No 2184 Ex. Fr. 5-9-00, dated 5th instant, forwarding copy of letter No 4121, dated 21st August 1900, from the First Assistant to the Resident in Mysore, remarking that the Mysore Durbar have no power under Act XXII of 1881 as amended by Act VI of 1885 and introduced into Mysore by Regulation III of 1885, to impose an import duty on country beer, I have the honor to state that the duty of two annas ordered to be levied in

1873

1873 by the then Chief Commissioner of Mysore, was on all beer brewed either for consumption in the Province, or for export, but not on country beer imported

2 In the year 1888 the Nilgiri Brewery then known as "Ooty Brewery Company" applied to the Dewan of Mysore for permission to import to and sell its beers in the Kolar Gold Fields The Dewan granted the permission on condition that the beer should be sent direct from the Brewery to the Amildar incharge of the Gold Fields, together with the letter of advice and Pass covering it, and that the Pass after examination & cancellation by the Amildar should be forwarded to the Abkari Assistant to levy the duty at 2 annas per gallon The Company having agreed to this condition, the Dewan directed the Deputy Commissioner, Bangalore District, incharge of the Abkari Department throughout the State, to make necessary arrangements for the opening of a country Beer tavern at the Kolar Gold mines

in favor of the said Company.
Vide correspondence ended with the
then Chief Secretary's official Memo
No. 606 Camp, dated 4th June 1888. Thereupon
the Deputy Commissioner, Bangalore
District, requested the Deputy Commissioner,
Kolar District, to issue the requisite
license. Accordingly the latter
issued the license to the Company
under section 13 of the Excise Act,
the above mentioned condition
being duly inserted in it, as per form
sanctioned in Government Proceedings
No. 2680/103 dated 18th July 1888. (See
also Government Proceedings No.
1329 Camp, dated 27th September 1888).
There being however, no specific
provision in the Act itself for
levying the duty on fermented
liquors, the Mysore Durbar framed
the requisite Rule II (b) under
Notification No. 31, dated the 9th
May 1889, in exercise of the
powers conferred by section 55
(g) of the Excise Act. The breach
of this Rule is punishable under
section 42 of the Excise Act.
The same principle was evidently
adopted when the Madras Government
entered into an arrangement
with

with the Mysore Durbar, under which the tree-tax on toddy drawn from the trees in the Madras Presidency and imported for consumption in the Mysore State is credited to the Mysore Durbar and vice versa. Toddy also being a fermented liquor like country beer and there being no provision in the Excise Act to permit its import from the Madras Presidency, the above arrangement with the Madras Government could have been legalized only by the application of the aforesaid Rule II (b)

3. I may add that as laid down in section 21 of the Act, no person shall have in his possession more than four seers of country fermented liquor unless he is permitted to manufacture or sell the same, or he holds a pass therefor from the deputy commissioner or from some other authorized officer. Accordingly the Mysore Durbar are I think competent to levy a duty or fee for passes being issued to persons to possess more than four seers of country beer

Therefore

Therefore even if the Nilgiri Brewery Company may not be liable to pay the duty in question for the beer they export into Mysore the consignees who import it into Mysore, and possess it in quantities of more than four seers are bound to pay it and obtain the necessary passes from the deputy Commissioner.

4. The Excise Act XXII of 1881 which is still in force in Mysore, has been amended in British India by Act 12 of 1896 which has extended the provision about the import of "Spirit" to "fermented liquor" also. But in consequence of the introduction of the tree-tax system of the administration of Toddy Revenue into Mysore, I refrained from moving the Durbar to introduce the amended Excise Act into Mysore also, because it contains no provisions whatever regarding the tree-tax system. I have however recommended in lieu of it, the introduction of the Madras Abkari Act which is complete in regard to the provisions required under the revised systems of the administration of the various items of Excise Revenue, now in force in Mysore.

5. The Government of India's letter

Note note on the margin of the Residency letter

letter No. 1092 I, dated the 9th March 1891, referred to by the First Assistant to the Resident has not been received in this office

6 The Agent of the Nilgiri Brewery Company in the Kolar Gold Fields has lately paid up the duty due on the consignments of beer imported

7 The gross receipts under Country Beer for the year 1899-1900, amounted to Rs 5493 of which the duty was Rs 1835 and the shop rent Rs 3658

I have the honor to be
Sir
Your most obedient servant

for Excise Commissioner
in Mysore

Urgent 99

Excise]

(87) 1899

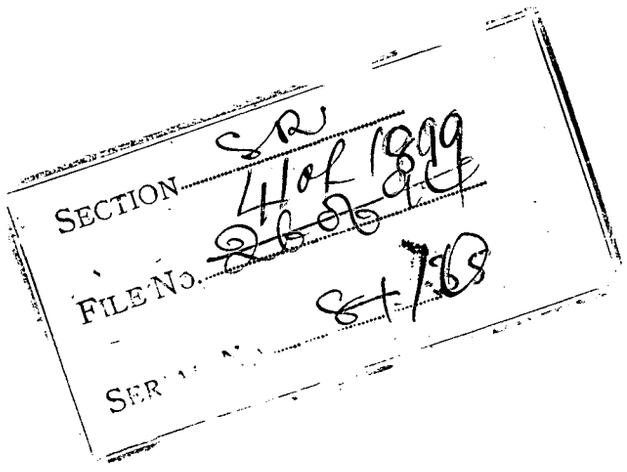
From

The Excise Commissioner in Mysore

To

THE SECRETARY TO GOVT. OF MYSORE,

General and ~~Revenue~~ Dept.s



316

Dated 14th September 1900

Despatched 18th

Received

General No. 1726

No. 80

Enclosure No.

In ~~reply to~~ continuation of this letter No 1541/72, dated 8th Instant-

SUBJECT.

Explains the circumstances under which he considers the late chief Commissioner's orders regarding the levy of duty at two annas per gallon on country beer, had the force of law at the time of the Rendition.

Rev 15/9 [illegible] 15/9

References
(to be entered only in the Dewan's Office.)

(19)

No. 1726/80

Excise Commissioners office
Bangalore, dated 12th September 1880

From

The Excise Commissioner
in Mysore

To

The Secretary to Government of Mysore
General and Revenue Departments.

Sir,

In continuation of my letter No 1541/72, dated 8th Instant, I have the honor to state that when the duty of two annas per gallon was imposed on country beer, under the late chief Commissioner's Proceedings No 584 Rev 22, dated 3rd May 1873, the Excise Act X of 1871 was not in force in Mysore, as it was introduced only in 1879 by the Government of India Notification No 251. I. J; dated the 12th September 1879; but the abkari Act XXI of 1856 amended by XXIII of 1860, which was introduced into Mysore by the Government of India Notification No 244, dated the 29th November 1864, was in force. Vide page 170 of the Revenue Manual of 1874.

The Section XXV of this Act runs as follows:—

"Spirituous liquors passed from Distilleries worked according to the English

English method, fermented liquors manufactured at a licensed ——— Brewery, and Spirituous and ~~—~~ fermented liquors imported either by land or by sea, ~~shall not be~~ sold except under license from the Collector."

The form of Beer License published on page 211 of the said Revenue Manual, shows that the prescribed duty on country Beer was originally one anna per gallon. This rate was raised to two annas per gallon in the late chief Commissioner's Proceedings No ×584/Rev 22, dated 3rd May 1873, and confirmed in the late chief Commissioner's Proceedings No ×6377—85/Rev 1113, dated 27th February 1880. Therefore I beg to submit that these rules of the late chief Commissioner seem to have had the force of law at the time of the Rendition.

put up.

I have the honor to be
Sir
Your most obedient Servant
H Wilmay
Excise Commissioner
in Mysore

Draft as per or 117

To

334

The Government Advocate,
in Mysore
Bangalore.

No 3118 dated 12. 10. 1900
Ex. 7 no 5 of 95-96.

Dated October 1900

I am forwarding herewith in original this Office file together with the draft of reply to the Residency in the matter of the levy of duty by the Mysore Government on country beer imported into the state, has the honor to request that the Government Advocate will be so good as to favor this Office Government with an early expression of his opinion on the subject legal question raised by the Hon'ble the Resdt. "B. O."

12/10/00

For Secretary

Sub[d] & Offr. Secy

This letter deals with a purely legal question raised in the letter from the Govt. They say that the Govt. are not entitled to any duty on imported beer. This view is controverted both by the Excise Comm[r] & the Govt. Advocate. I think the question should have the benefit of a thorough examination in the Legislative Branch. They may be referred accdy.

KR 9/11/00

Forwarded to the Asst Secretary, Legislative Branch, for favor of his opinion. The point is a very important one.

EH 10/11/00

My opinion is contained in the accompanying draft letter to Govt. and I submit that it is in accordance with the views of the Govt. Advocate and the Excise Comm[r].

KG 6/11/00

REVENUE DEPARTMENT
G.L. No. 3219
NOV. 5
No. Ex 144
FOREIGN OFFICE
1900

5216

From

The Govt. Advocate
in Mysore.

98

To

THE SECY. TO THE GOVT. OF MYSORE,
GEN. & REV. DEPTS.

SECTION SR
FILE No. 41 of 1899
SERIAL No. 42 of 1899
Dated 2/11/00
Despatched
Received
General No. 13
No.

3484

Enclosure No. 1 file

Stating that he is of opinion that country liquor cannot be imported without the payment of duty fixed by the Govt. & even if it is imported it cannot be possessed or sold in any place of the territories of Mysore without the payment of excise duty imposed by the Govt. as per rule framed by the Govt. of Mysore under section 55 of the Act.

References to be marked.

Submitted with reference to this office no. 3118 dt 12.10.00 & Govt. No. 7 Rev 5 of 95-96. Drft Letter also put up

KG
6/11/00

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OFFICE OF THE
GOVERNMENT ADVOCATE IN MYSORE.

DATED Bangalore 2d. Novr/1900

No. B
En. No. 1 file of Correspondence

99

From

THE GOVERNMENT ADVOCATE
IN MYSORE.

To

THE SECRETARY TO THE GOVERNMENT OF MYSORE,
GENERAL AND REVENUE DEPARTMENTS.

3845

Sir,

In reply to your letter No 3118
24598
dated the 12th Instant, I have the honor to state that the provisions of Sections 3, 12, 13, 21, 23, 36, 39, 41, 55 of Regulation III of 1885 (Excise Act) and of the notification of the Govt No. 31 dated 9th May have to be read together.

Section 23 prohibits the import of any Spirits manufactured at any place in India beyond the limits of the territories of Mysore. There is no similar provision in

the Act for the import of fermented liquor, and at the same time, there is no provision in the Act Exempting such fermented liquor from duty. Though the import of fermented liquor may not be penal under the provisions of the Act, possession beyond certain quantity as mentioned in the Act, or sale of fermented liquor without a license on payment of duty as prescribed by the Government is prohibited and penal.

Section 55 of the Act authorizes the Government to frame rules for the issue of Licenses and as to the fee payable and under the last clause of Section 3, the Government have declared as per notification No 31 dated 9th May 1889 under rule I and as amended by Notifications

No 4 dated the 4th April 1891 and
4920-R. 511 dated the 14th September
1893, that foreign Spirits and
foreign Fermented liquor are
such spirits or fermented liquors
as are manufactured in any place
in Europe America and Australia
and imported into the territories
of Mysore after due payment of
duty to the British Indian Govern-
ment at the port of importation
in India and that all other spirits
and fermented liquors (including
those manufactured in Java
Ceylon and any place whatsoever
in India) shall be treated as
Country Spirits or Country fermented
liquors as the Case may be -

The Government have under
rule II (a) Exempted foreign
Spirits and foreign fermented

liquors from payment of Excise duty & under rule II (b) have made all Country spirits and Country fermented liquors liable to the payment of Excise duty. The Government of Mysore is legally authorised to decide as they have done as per notification referred to in the above as to what is to be considered as foreign spirit and what as fermented liquor and what as Country spirit and Country fermented liquor and such decision as per last clause of Section 3 of the Act is binding on Courts and therefore necessarily on the parties Concerned.

It is to be conceded that the import of fermented liquor is not prohibited under the Act by implication, possession,

beyond the quantity mentioned as per Section 21 of the Act, or Sale of any quantity 349 any place in the territories of Mysore is prohibited and penal.

Under Section 12 of the Act, no spirit, fermented liquor and drugs shall be sold etc without a licence

Under Section 13 Subject to the rules made by Government, the Deputy Commissioner may grant licenses for the sale of spirit and fermented liquor, foreign and country etc wholesale or retail within his District or any part thereof or any place therein

Under Section 21, no person shall have in his possession

any quantity of any spirit or fermented liquor larger than that specified in Section 3 clause (K) in respect of such spirit or liquor unless he is permitted to manufacture or sell the same, or he holds a pass therefor etc

Under Section 39, any person who in Contravention of Section 12 Sells any spirit etc shall be punished with imprisonment for 4 months or with a fine or with both.

Under Section 41, any person who possesses any spirit etc in Contravention of Sections 21 and 22 shall be punished with imprisonment for 3 months or with a fine or with both.

Under the provisions of Several Sections above quoted

possession or Sale or both of
Spirit or liquor without a
licence is penal and the Govt
under the provisions of Section
55 and 3 of the Act have
denied an Excise 357 for the
grant of licence to possess or
sell the above

Reading therefore, the Whole
provisions of the Act and
taking into consideration the
whole scope of the Act I am
of opinion that no country
liquor cannot be imported
without the payment of duty
fixed by the Government,
and Even if it is imported,
it cannot be possessed
or sold in any place of
the territories of Mysore

13

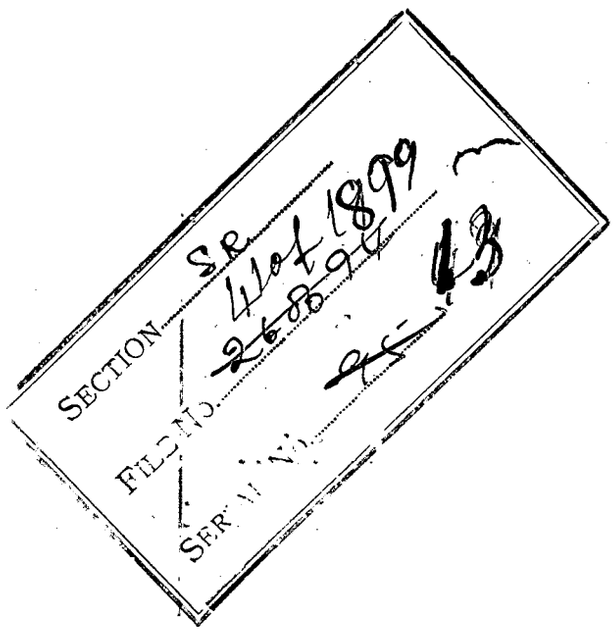
without the payment of Excise duty imposed by the Government as per rule framed by the Government of Algoa under Section 55 of the Act -

The original file is returned herewith -

I have the honor to be
Sir,
Your most Obedient Servant

S Fernandez

Government Advocate



To

The First Assistant to the Resident in Mysore.

No: 4293 / Ex.7.5-95 dated 27th November 1900.

Sir,

I am directed to acknowledge the receipt of your letter no.4121/401-900 dated the 21st August 1900, in which the question is raised, whether the Mysore Government have any legal power to enforce the payment of duty on beer manufactured in British India and imported into the Mysore State. It is argued that they have no such power, since section 23 of the Excise Act 1881, (as applied to Mysore by Regulation III of 1885), while empowering them to impose a duty on imported spirit, is silent as regards the imposition of a duty on imported fermented liquor. And you further state that, in the opinion of the Hon'ble the Resident, the Darbar's Notification of the 9th May 1889, no.31, is ultra vires.

2. Both as calling in question the legality of a duty which has being levied since the year 1873, and as affecting a not inconsiderable portion of the Excise revenue of the State, the point raised in your letter has seemed to the Darbar to be of sufficient importance to render a reference to com-

should he still feel any doubts on the point, and ~~believe~~ he ~~is~~ not, justified in informing brewers exporting ~~beer~~ from British India or the Civil and Military Station that the duty is legally payable to the Darbar, the Darbar at least will deem it a favour if he will kindly ~~direct himself to~~ warn them of the fact that the Darbar do claim to impose such a duty, leaving it to any party interested, if he thinks the claim inadmissible, to contest the same in a competent Court of law, or to take the risk of a prosecution under the Excise Act.

2. With regard to the concluding portion of your letter under acknowledgment, I am to state that a revised Excise Rule providing, among other matters, for ~~import~~ levy on import duty on liquor has just been framed by the Darbar and will be submitted for the approval of the Govt of India - I have &c., &c.,

Secretary.

petent legal opinion highly desirable. And I am now to communicate the result of such reference for the consideration of the Resident.

3. Attention must, in the first place, be invited to section 21 of the ExciseAct, under which no person can have in his possession in the Mysore State any quantity of fermented liquor in excess of 4 seers unless he is permitted to manufacture or sell the same or he holds a pass therefor from a duly empowered officer. Again, as regards sales, section 12 provides that no fermented liquor shall be sold except under and in accordance with the terms of a license granted under the provisions of the Act; and section 13 lays down that the grant of such licenses shall be subject to rules made by Government. Such Rules ~~for "the grant of licenses for the vend (wholesale or retail) of foreign fermented liquor"~~ were accordingly framed by Government under the general power conferred by section 55, clause (g) of the Act, and published with Notification no.31 dated 9th May 1889; and unless it can be shown that they contain any provision inconsistent with the Excise Act, their validity cannot be questioned, it is submitted.

~~4.~~ The levy of an excise duty on fermented liquor,-- imported liquor equally with liquor locally manufactured

-- cannot be said to be inconsistent with the Act merely because the latter says nothing about the levy of an import duty on such liquor.

4. But even granting that the levy of an import duty would be contrary to the provisions of the Act, it is evident that, as soons as the liquor reaches Mysore territory, it becomes the object of "possession" on the part of the consignee or other person, and such possession, if the quantity exceeds 4 s ers, renders the taking out of a pass compulsory, on pain of a prosecution under section 41; and if, in addition, any attempt is made to sell it, in whatever quantity, such act is punishable under section 39, in the absence, that is, of a license. Now the exaction of a fee or duty or other money payment under whatever designation, has always been considered a quite legitimate condition to attach to the grant of a lic nse or pass; and of this nature is the excise duty which the Darbar has hitherto been recovering without question on consignments of "country" beer and other fermented liquors made or received within the limits of the State.

5. The Darbar ~~accordingly~~ venture to hope that the explanation now given will induce the Hon'ble the Resident to reconsider his opinion. But